

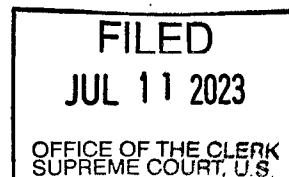
23-5140

ORIGINAL

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES



RALPH CASTILLO

(Your Name)

— PETITIONER

vs.

RICHARD MARTINEZ, WARDEN,  
STATE OF NEW MEXICO

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
APPLCATION FOR WRIT OF CERTIORARI FROM

THE NEW MEXICO SUPREME COURT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RALPH CASTILLO

(Your Name)

P.O. BOX 639

(Address)

Las Cruces, N.M. 88004

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

1. Was it proper for the State to intentionally mislead the court when it required that petitioner show the "presumption of regality" when the real issue that was presented was that the judge aggravated petitioner's sentence without a jury trial in order to determine the aggravating circumstances it would use to enhance petitioner's sentence?

Petitioner has shown that he should have received a trial prior to sentencing according to statute pursuant to 31-18-15.1 (A) NMSA 1978, in order to allow a jury to find the aggravating circumstances necessary to enhance petitioner's sentence.

2. Does Petitioner retain the right to a jury determination on the aggravating circumstances surrounding the offense or concerning the offender even though Petitioner did not stipulate to the relevant facts in his plea agreement, but rather he stipulated to the elements of the crime to which he pled, not to the aggravating factor(s) or circumstance(s)?

The court in this case chose to accept petitioner's plea agreement as a valid waiver of the right to a jury determination of the aggravating circumstance in order to enhance petitioner's sentence even though the record

did not show that petitioner knew that he had the right to waive that jury trial to determine the aggravating circumstance and second that by pleading guilty he was ultimately waiving that particular right.

3. Should the lower courts have dismissed petitioner's case when they clearly stated in their response that:

"There is no dispute that the plea agreement lacked a specific waiver of trial by jury regarding aggravating factors." and "Similarly, there is no dispute that the district court did not comply with the procedural requirements of the version of 31-18-15... in place at the time of sentencing".

Petitioner has continuously argued this specific fact in his habeas to the courts to get them to understand that his sixth amendment right had been violated and that he requested it to be addressed even through the appeals court in New Mexico agreed based on State v. King, 2007-NMCA-130, 142 N.M. 699 and the United States Supreme Court has agreed in Cunningham v. California, 549 U.S. 270, 127 S. Ct. 856 (2007) that the court violated petitioner's sixth amendment right to have a jury determination whether aggravating circumstances existed in enhancing petitioner's sentence.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

- STATE OF NEW MEXICO V. RALPH CASTILLO, D-202-CR-2005-02141 (Jurisdiction of the Second Judicial District Court). Judgment made on, July 26, 2022.
- RALPH CASTILLO V. RICHARD MARTINEZ, Warden, and STATE OF NEW MEXICO, S-1-SC-39574 (Jurisdiction of the New Mexico Supreme Court). Judgment made on, February 16, 2023.

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\* APPENDIX H.1 Petitioner's reply to the State of New Mexico's Response to Rule 12-501 Petition For Writ of Certiorari

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Fn.1

The Supreme Court may take judicial notice of the record in such Court of an earlier case.

The New Mexico Supreme Court order was submitted in case No. 22A905 For extension of time within which to file a petition for a Writ of Certiorari, which was granted on April 14, 2023, to include July 16, 2023, under Case No. 22A905.

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

- State v. King, 2007-NMCA-130, 142 N.M. 699;
- Sneed v. Cox, 1964-NMSC-250, 74 N.M. 659;
- Apprendi v. New Jersey, 530 U.S. 466, 468-469, 120, S. Ct. 2348 (2000).
- Blakely v. Washington, 542 U.S. 296, 304-305, 124 S. Ct. 2531 (2004);
- Cunningham v. California, 549 U.S. 270, 127 S. Ct. 856 (2007);

### STATUTES AND RULES

New Mexico Statute Annotated 1978:

Section 31-18-15;

Section 31-18-15.1 (1993, amended 2009);

Rules:

New Mexico Rules Annotated:

Rule 5-802;

Rule 12-501;

Rule 12-502(1);

### OTHER

- "Presumption of Regularity"

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix En.1 to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the New Mexico Supreme court appears at Appendix En.1 to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.



## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was February 16, 2023  
A copy of that decision

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including July 16, 2023 (date) on May 14, 2023 (date) in Application No. 22 A 905. See Appendix L

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendments

Sixth;

Fourteenth;

New Mexico Constitution

Article II Section(s)

7 (Habeas Corpus);

12 (Trial by Jury);

13 (Bail, Excessive Fines, Cruel and Unusual Punishment);

14 (Indictment and Information; Grand Juries; Rights of accused);

15 (Self-Incrimination, and Double Jeopardy);

18 (Due Process, Equal Protection, Sex Discrimination);

New Mexico Statutes

NMSA 1978 § 31-18-15.1 (1993, amended 2009);

## STATEMENT OF THE CASE

On July 23, 2007, Petitioner entered a Plea Agreement (Exhibit A), in which he pled no contest to one count of Criminal sexual Penetration of a Minor in the First Degree (Child under 13), and two counts of Criminal Sexual Contact of a Minor in the third Degree (Child under 13). Petitioner also admitted to a number of prior Felony Convictions.

The Plea Agreement contains a sentencing agreement which states, in relevant part, that the sentence for the conviction for Count 1, which carries a basic sentence of eighteen (18) years, "shall be aggravated to a term of 23 years." The parties further agreed that "the defendant shall be sentenced to 23 years of incarceration in the Department of Corrections and that the remaining six years shall be suspended during which time defendant shall be placed on supervised probation." Nothing in the Plea Agreement explains what the aggravated circumstances were that would warrant an enhancement of the basic sentence for Count 1.

On August 8, 2007, a Judgment, Partially Suspended sentence and commitment (Exhibit 1) was filed. Consistent with the Plea Agreement, the basic sentence of eighteen (18) years for Count 1 was aggravated to twenty-three (23) years. Petitioner also received sentences of three (3) years each for Count 2 and Count 3, for a total term of twenty -

nine (29) years, of which six (6) were suspended for an actual term of imprisonment of twenty-three (23) years. The Judgment, Partially suspended sentence and commitment does not state what facts existed to support a finding of aggravating circumstances.

LOPD has attempted to obtain the transcripts or recordings of the plea colloquy and sentencing hearings to ascertain whether specific facts relating to the aggravation of count 1 were discussed. Unfortunately, the official reporters who stenographically reported these proceedings are no longer employed at the Second Judicial District Court, and no stenographic or electronic media notes are available at this time. (see Exhibit C and D). From a review of the registry of actions for this case on Odyssey, it does not appear that any other document has been filed, stating the facts supporting a finding of aggravating circumstances relating to count 1.

## REASONS FOR GRANTING THE PETITION

Petitioner's conviction for Criminal Sexual Penetration in the First Degree, which carries a basic sentence of eighteen (18) years, was illegally aggravated to a term of twenty-three (23) years, contrary to the requirements of section 31-18-15.1 (1993, amended 2009) NMSA 1978.

Petitioner entered into a plea agreement on July 24, 2007, in which he pled no contest to a number of charges including count 1, Criminal Sexual Penetration in the First Degree, at issue in this claim. The plea agreement contained a sentencing agreement that "count 1 shall be aggravated to a term of 23 years."

Petitioner was sentenced on August 8, 2007, consistent with the plea agreement. No specific findings were made in the plea agreement or Judgment and Sentence stating the reasons for aggravating the sentence.

At the time Petitioner entered the plea, section 31-18-15.1 (A) (1993, amended 2009) NMSA 1978, stated that:

The Court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever evidence or statements it deems will aid it in reaching a decision. The court may alter the basic sentence, it shall issue a brief statement

of reasons for the alteration and incorporate that statement in the record of the case.

Petitioner states that the highest court of the State of New Mexico has contrarily ruled against its own ruling in State v. King, 2007-NMCA-130, 142 N.M. 699; Cunningham v. California, 549 U.S. 270 (2007); and NMSA 1978 section 31-18-15.1 (1993, amended 2009).

As an initial matter, it should be noted that in January of 2007, prior to Petitioner's plea, the United States Supreme Court decided Cunningham v. California, 549 U.S. 270 (2007), which struck down a California statute, that similarly to the version of section 31-18-15.1 in place at the time of Petitioner's plea, placed sentence-elevating fact finding within the judge's province. The Supreme Court determined that depriving the defendant the right to have such a fact finding made by a jury rather than a judge was in violation of the Sixth and Fourteenth Amendments.

Petitioner argues that his aggravated sentence is contrary to his Sixth Amendment right and the requirements of section 31-18-15.1 (1993, amended 2009) NMRA 1978. Petitioner specifically claims that his sentence was aggravated in violation of his Sixth Amendment right to have a jury determine whether aggravating

circumstances existed and whether the sentence complied with the procedural requirements of the version of 31-18-15.1 in place at the time of Petitioner's sentence.

### CONCLUSION

The petition for a writ of Certiorari should be granted

Respectfully submitted,

Ralph Castillo

Date: 6/20/2023

RAIPH CASTILLO # 36506

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